

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

MIAMI VALLEY FAIR HOUSING  
CENTER, INC., et al.,

Plaintiffs,

-v-

STEINER + ASSOCIATES, INC.,  
et al.,

Defendants.

Case No. C-3:08-cv-150

Judge Thomas M. Rose  
Magistrate Judge Sharon L. Ovington

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**ENTRY AND ORDER OVERRULING PLAINTIFFS' AND MECHAM &  
APEL'S JOINT OBJECTIONS (Doc. #433) TO THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION REGARDING THEIR  
JOINT MOTION TO LIFT STAY AND TO DISMISS; ADOPTING THE  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS IN ITS  
ENTIRETY AND DENYING PLAINTIFFS' AND MECHAM & APEL'S  
JOINT MOTION TO LIFT STAY AND TO DISMISS WITHOUT  
PREJUDICE**

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This matter comes before the Court pursuant to a Joint Objection to the Report and Recommendations filed on December 1, 2011, by Magistrate Judge Michael J. Newman regarding a Joint Motion To Lift Stay and To Dismiss Plaintiffs' claims against Defendant Mecham & Apel Architects, Inc. ("Mecham & Apel"). (Doc. #431.) A Joint Objection to this Report and Recommendations was filed by Mecham & Apel and by the Plaintiffs, who are Miami Valley Fair Housing Center, Inc., Metropolitan Milwaukee Fair Housing Council, Inc. and The National Fair Housing Alliance. (Doc. #433.) The time has run and no response to the Objection has been filed. The Objection is, therefore, ripe for decision.

The Plaintiffs and Mecham & Apel had filed a Stipulation of Dismissal with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)A). (Doc. #425.) However, this stipulation was found to not

be in compliance with Fed. R. Civ. P. 41(a)(1)(A) by the Court because it did not reflect the signature of all of the named Defendants. The Parties were afforded ten (10) days to re-submit a revised dismissal entry signed by all of the Parties to the case.

Instead of a revised stipulated dismissal entry, the Plaintiffs and Mecham & Apel filed a Joint Motion To Lift Stay and To Dismiss Plaintiffs' claims against Defendant Mecham & Apel Architects, Inc. pursuant to Fed. R. Civ. P. 41(a)(2). A court may dismiss a claim pursuant to Fed. R. Civ. P. 41(a)(2) on terms that the court considers proper.

The Plaintiffs and Mecham & Apel argue that dismissal in this case is proper because they have entered into a settlement that is fair and proportionate to Mecham & Apel's share of the potential liability. However, Defendants, other than Mecham & Apel, remain and the remaining Defendants apparently do not agree that the settlement between the Plaintiffs and Mecham & Apel is fair and proportionate, otherwise, the Stipulation would have been signed by all as required by Fed. R. Civ. P. 41(a)(1)(A). Further, at this time, the Court has no way to determine if the settlement between Plaintiffs and Mecham & Apel is fair and proportionate.

In addition, the Plaintiffs and Mecham & Apel indicate that they are disturbed that the cross-claim filed by Messer Construction Company against Mecham & Apel was permitted to be filed while the case is stayed. The Court notes that the cross-claim filed on November 2, 2001, (doc. #427), while the case was stayed, has since been dismissed (doc. #435) rendering this concern moot. The Court also notes that Messer Construction Company filed a previous cross-claim against Mecham & Apel on June 27, 2008, before this matter was stayed.

Magistrate Judge Newman recommends that the Joint Motion To Lift Stay and To Dismiss be denied. As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule

72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that the Magistrate Judge's Report and Recommendations regarding Plaintiffs' and Mecham & Apel's Joint Motion To Lift Stay and To Dismiss is adopted in its entirety. Further, Plaintiffs' and Mecham & Apel's Objections (doc. #433) are overruled.

The stay will not be lifted at this time. Also, Plaintiffs' and Mecham & Apel's Joint Motion To Dismiss is denied without prejudice to renewal once the stay is lifted or otherwise hereafter in the litigation.

**DONE and ORDERED** in Dayton, Ohio, this Thirtieth Day of December, 2011.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record